

*Respondent* means a person upon whom the RSPA has served a notice of probable violation.

*State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in 49 U.S.C. 5119, relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

*Transports or transportation* means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

[Amdt. 107-3, 41 FR 38170, Sept. 9, 1976, as amended by Amdt. 107-4, 43 FR 43307, Sept. 25, 1978; Amdt. 107-5, 43 FR 48642, Oct. 19, 1978; Amdt. 107-8, 46 FR 9888, Jan. 29, 1981; Amdt. 107-12, 48 FR 53711, Nov. 29, 1983; 50 FR 45730, Nov. 1, 1985; Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; Amdt. 107-32, 59 FR 49130, Sept. 26, 1994; Amdt. 107-38, 61 FR 21094, May 9, 1996; 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001]

#### § 107.5 Request for confidential treatment.

(a) If any person filing a document with the Associate Administrator claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if that person requests the Associate Administrator not to disclose the information, that person shall file, together with the document, a second copy of the document with the confidential information deleted. The person shall indicate each page of the original document that is confidential or contains confidential information by marking or stamping "confidential" on each page for which a claim of confidentiality is made, and may file a statement specifying the justification for the claim of confidentiality. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commer-

cial or financial information, that person shall include a statement as to why the information is privileged or confidential. If the person filing a document does not mark or stamp a document as confidential or submit a second copy of the document with the confidential information deleted, the Associate Administrator may assume that there is no objection to public disclosure of the document in its entirety.

(b) The Associate Administrator retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the Associate Administrator to deny the claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

[40 FR 48470, Oct. 15, 1975, as amended by Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-38, 61 FR 21095, May 9, 1996]

#### § 107.7 Service of process on non-residents of the United States.

(a) *Designation of agent for service.* When a person who is not a resident of the United States is required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States as his agent upon whom service of process may be made for him and on his behalf, the agent may be an individual, a firm, or a domestic corporation. Any number of principals may designate the same person as agent. A designation is binding on a principal even if the designation is not in compliance with all the requirements of this section, until rejected by the Associate Administrator. A designated agent may not assign performance of his functions under the designation to another person.

(b) *Form and contents of designation.* The designation shall:

(1) Be in writing and dated;

(2) Be made in the legal form required to make it valid and binding on the principal under the laws, corporate bylaws, or other requirements governing the making of the designation by the principal at the place and time where it is made and the person or persons signing the designation shall certify that it is so made;

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(3) State the full legal name, principal name of business and mailing address of the principal;

(4) Provide that it remains in effect until withdrawn or replaced by the principal;

(5) State the legal name and mailing address of the agent; and

(6) Bear a declaration of acceptance duly signed by the designated agent.

(c) *Method of service.* Service of any process, notice, order, decision, or requirement of the Associate Administrator may be made by registered or certified mail addressed to the agent with return receipt requested or in any other manner authorized by law. If service cannot be effected because the agent has died (or, if a firm or a corporation ceases to exist) or moved, or otherwise does not receive correctly addressed mail, service may be made by publication in the FEDERAL REGISTER.

[Amdt. 107-2, 41 FR 7509, Feb. 19, 1976, as amended by Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; 66 FR 45377, Aug. 28, 2001]

## § 107.9 Public docket room.

There is established in the RSPA offices at 400 7th Street, SW., Washington, DC, a public docket room in which there is available for public inspection and copying:

(a) Copies of notices of proposed rulemaking issued by the RSPA or its predecessor agency, including advance notices, together with the comments received thereon during rulemaking proceedings, copies of any related FEDERAL REGISTER notices, final rules, petitions for reconsideration, and decisions issued in response to petitions for reconsideration;

(b) Applications for exemptions from the Department of Transportation's regulations governing the transportation of hazardous materials, including supporting data, memoranda of any informal meetings with applicants, related FEDERAL REGISTER notices, comments received thereon during the public comment period and copies of decisions issued granting or denying applications for exemptions;

(c) Applications for preemption and waiver of preemption determinations under subpart C of this part, together with the comments received thereon,

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related documents filed with the RSPA, copies of related FEDERAL REGISTER notices, and rulings, determinations and orders issued in response to those applications;

(d) Records of compliance order proceedings and copies of RSPA compliance orders;

(e) Appeals filed under this part and RSPA decisions issued in response to those appeals; and

(f) Such other information pertaining to the RSPA's hazardous materials program required by statute to be made available for public inspection and copying and any information which the RSPA determines should be made available to the public.

[Amdt. 107-3, 41 FR 38170, Sept. 9, 1976, as amended by Amdt. 107-8, 45 FR 81571, Dec. 11, 1980; Amdt. 107-24, 56 FR 8622, Feb. 28, 1991]

## § 107.11 Service.

(a) Each order, notice, or other document required to be served under this part shall be served personally or by registered or certified mail, except as otherwise provided.

(b) Service upon a person's duly authorized representative constitutes service upon that person.

(c) Service by registered or certified mail is complete upon mailing. An official United States Postal Service receipt from the registered or certified mailing constitutes prima facie evidence of service.

[Amdt. 107-3, 41 FR 38170, Sept. 9, 1976]

## § 107.13 Subpoenas, witness fees.

(a) The Administrator, RSPA, the Chief Counsel, Research and Special Programs Administration, or the Official designated to preside over a hearing convened in accordance with this part, may sign and issue subpoenas either on his own initiative or, upon an adequate showing that the information sought will materially advance the proceeding, upon the request of any person participating in that proceeding.

(b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.